

Subpart 225.1—Buy American Act—Supplies

225.102 Policy.

(a)(2) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under 225.105.

(3)(A) Specific public interest exceptions for DoD for certain countries are in 225.872.

(B) The Under Secretary of Defense (Acquisition and Technology) has determined that, for procurements subject to the Trade Agreements Act, it is inconsistent with the public interest to apply the Buy American Act to information technology products in Federal Supply Group 70 or 74 that are substantially transformed in the United States.

(C) Normally, use the evaluation procedures in 225.105, but consider recommending a public interest exception where the purposes of the Buy American Act are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate—

(1) If accepting the low domestic offer will involve substantial foreign expenditures, or accepting the low foreign offer will involve substantial domestic expenditures;

(2) To ensure access to advanced state-of-the-art commercial technology; or

(3) To maintain the same source of supply for spare and replacement parts (also see paragraph (b)(iii)(B) of this section)—

(i) For an end item that qualifies as an American good; or

(ii) In order not to impair integration of the military and commercial industrial base.

(D) A determination whether to grant a public interest exception shall be made after consideration of the factors in 10 U.S.C. 2533—

(1) At a level above the contracting officer for acquisitions valued at less than \$100,000;

(2) By the head of the contracting activity for acquisitions valued at \$100,000 or more but less than \$1,000,000; or

(3) By the agency head for acquisitions valued at \$1,000,000 or more.

(b)(i) A determination that an article, material, or supply is not reasonably available is required where no domestic offer is received or when domestic offers are insufficient to meet the requirement and award is to be made on a nonqualifying country end product.

(ii) Except as provided in FAR 25.102(b)(1), the determination must be approved—

(A) At a level above the contracting officer, if the acquisition is estimated not to exceed \$25,000;

(B) By the chief of the contracting office if the acquisition is estimated not to exceed \$250,000;

(C) By the head of the contracting activity (HCA) or immediate deputy if the acquisition is estimated not to exceed \$2 million; or

(D) By the head of the agency, or designee at a level no lower than an HCA, if the acquisition is estimated to exceed \$2 million.

(iii) A determination as to whether an article, material, or supply is reasonably available is not required for—

(A) End products or components listed in 225.108(d)(1) or FAR 25.108(d)(1);

(B) Acquisitions for spare/replacement parts when the acquisition is restricted to the original manufacturer or supplier; or

(C) Acquisition of foreign drugs by the Defense Supply Center, Philadelphia when the Chief of the Technical Operations Division, Directorate of Medical Materiel, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

[56 FR 36367, July 31, 1991, as amended at 56 FR 67215, Dec. 30, 1991; 60 FR 34470, July 3, 1995; 63 FR 11531, Mar. 9, 1998; 64 FR 51076, Sept. 21, 1999]

225.103 Agreements with certain foreign governments.

See 225.872.